

CHAPTER 3

EMPLOYMENT

A. WAGES

“Wages” is defined as “compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, or commission basis.” Idaho law requires employers to pay wages due employees at least once during each calendar month on regular paydays designated in advance by the employer. Generally, an employee should be paid within fifteen days of the end of a pay period. Employers may not withhold any portion of an employee’s wages unless the employer is required to do so by law (e.g. state and federal tax and child support withholding garnishments) or the employer has written authorization from the employee for the withholding (e.g., health insurance premiums for dependents). An itemized statement of deductions must be provided to the employee for each pay period.

Both Idaho and federal law have minimum wage requirements and the Federal Fair Labor Standards Act controls overtime wage payments. Specific exceptions exist with respect to minimum wage and overtime pay requirements for executives, professionals, outside sales people, agricultural workers and various others.

The Idaho minimum wage is \$5.15 per hour. It does not apply to an employee who works in an executive, administrative or professional capacity; anyone engaged in domestic service; outside salespeople; any child under 16 years of age working part time at jobs not exceeding 4 hours per day with any one employer or at odd jobs; seasonal employees of a nonprofit company program; and certain agricultural employees (those in the employer’s immediate family, those over 16 years of age who are employed in honest labor paid both presently and customarily on a price rate basis, commute to work daily and have worked less than 13 weeks of the preceding calendar year in agriculture, and those 16 years of age or younger who are paid both currently and customarily on a price rate basis, is employed on the same farm as his/her parent or person standing as loco parentis, and is paid at the same price rate as persons over 16 or is principally engaged in the range production of livestock). The federal minimum wage is currently \$5.15 per hour.

Idaho law requires every employer to notify its employees at the time of hiring of the rate of pay and usual pay period. Upon the employee’s request, this information must be provided in writing. With regard to any reduction in wages, the employer also is required to notify employees and do so in writing upon the employee’s request.

Upon separation of employment (layoff, resignation or discharge), the employer must pay all wages then due the employee by the earlier of the next regularly scheduled payday or within ten days of the layoff or termination. However, payment must be made within 48 hours if written request for earlier payment is made upon the employer (weekends and holidays are excluded).

Contact the Wage and Hour Division of the U.S. Department of Labor and/or the State of Idaho Department of Labor and Industrial Services (317 Main Street, Boise, Idaho 83735; (208) 332-3579), or call the regional representatives at Idaho Department of Labor offices located in the main Idaho cities if you have any questions. Idaho law prohibits retaliation against employees who exercise their rights under the wage and hour laws.

B. SPECIAL PROVISIONS FOR MINORS

You may work at most occupations once you are 16 years old. No one under 18, however, may be employed in any business or occupation determined by the U.S. Secretary of Labor to be hazardous or injurious to health. No child under 14 years of age shall be employed in connection with any mine, factory, workshop, mercantile establishment, store, telegraphy or telephone office, laundry, restaurant, hotel, apartment house or in the distribution or transmission of merchandise or messages.

No one under age 16 may work more than 40 hours a week nor more than 8 hours a day, during vacation time; nor more than 3 hours a day or 18 hours a week when school is in session; nor before 7:00 a.m. or after 7:00 p.m. (9 p.m. in summer). No child under 16 shall be employed during the hours in which the public schools are in session, except under school sponsored work experience and career exploration programs.

Except in occupations relating to mining or manufacturing, or occupations declared hazardous by the Secretary of Labor, a parent who is sole proprietor or a partner of a business may exercise parental rights by employing the child as the parent wishes, provided no violation of the Child Protection Act occurs. Under these conditions, there is no set minimum wage nor is there an age limit. When the business is incorporated, the parental right is no longer recognized and federal and state laws govern wages, hours and age of a working child.

C. DISCRIMINATION

Federal and state laws prohibit discrimination in employment based on race, color, sex, religion, national origin, disability, or age (40 or over). These laws have broad coverage. They require all employers who have at least five employees (and in special instances, some employing less than five) to hire, discipline, discharge, promote and pay their workers on a nondiscriminatory basis. Some common examples of illegal discriminatory acts are: paying women less than men to do the same work; refusing to hire women for certain jobs because of stereotyped ideas about “women’s work” and “men’s work”; denying training opportunities to women because “they probably won’t stay with the company, anyway” due to family obligations; refusing to hire or firing a person who is disabled, is considered to be disabled or has a history of a disability, because of the disability, real or perceived, failing to accommodate a person who is disabled if a reasonable accommodation can be made and would not be an undue hardship.

The important principle of nondiscrimination is that people should be considered on the basis of individual capacities and performance and not on the basis of characteristics generally believed to apply to a group. However, the law provides no protection for individuals claiming discrimination on the basis of sexual orientation in non-federal employment. Idaho’s anti-discrimination laws are administered by the Idaho Human Rights Commission. If you have any questions or believe you have been subjected to illegal discrimination, contact the Commission at 1109 Main Street, Boise, Idaho, or call 334-2873. Collect calls will be accepted.

1. DISABILITIES

The Americans with Disabilities Act (ADA) of 1990 applies to employers, employment agencies, labor organizations or joint labor management committees. It requires equal opportunity in the selection and hiring of qualified applicants with disabilities and requires equal treatment, promotions and benefits.

Employers may not make employment inquiries about an applicant’s disability or conduct preemployment medical exams. They may ask if applicants can perform specific job functions if they are essential to the job and may condition a job offer on the results of a medical exam, but only if the exam is required for all entering employees in similar jobs. The Act also requires reasonable accommodation for applicants and workers with disabilities when such accommodation would not impose an undue hardship. Reasonable accommodations may include making facilities more accessible, job restructuring, part time or modified work schedule, modifications to examinations or training, the provision of qualified trainers or interpreters and/or other similar accommodations. Reasonable accommodations do not include reassigning essential functions of the job to other employees.

For the accommodation to be an undue hardship, it must require significant difficulty or expense. Factors included to make these decisions could be the nature or cost of the accommodations, the resources and size of the business and the impact the accommodations would have on the facility. Individuals can file complaints with the Equal Employment Opportunity Commission within 300 days of a violation and in the Idaho Human Rights Commission within one year of a violation.

2. PREGNANCY

The law does not require an employer to give any special considerations to workers who are pregnant, although many Idaho employers do so voluntarily. If your pregnancy makes it difficult for you to perform a part of your job, let your doctor and your employer know. It may be that an accommodation can be made that will work well for both you and your employer.

The law does require that a pregnant worker be treated the same as other temporarily disabled workers. Health insurance benefits, disability leave, sick pay benefits and light duty assignments can be no more restrictive for pregnancy than for any other disability. A worker cannot be required to leave a job she is able to perform just because her pregnancy is beginning “to show.” She cannot be required to return to work from disability leave at a preset time that applies only to pregnancies. In these matters, employers and employees should be guided by the individual’s doctor’s advice.

3. HARASSMENT

Discrimination laws prohibit any harassment of individuals based upon the person’s protected status such as race, age, disability or gender. Because sexual harassment involves differing conduct, it is worthy of special mention.

Sex discrimination laws hold that a worker cannot be forced to submit to unwelcome sexual advances in order to get or keep their jobs. Employers must take steps to ensure the work environment is not offensive, hostile, or intimidating due to unwanted sexual conduct.

On the other hand, employees are obligated to let their employers know when they believe sexual harassment is occurring. You should report the harassment per your employer’s policy, if any, and at least try to exhaust your remedies at work before you quit employment should that become necessary. Failure to do so may render you ineligible for unemployment benefits and negate an otherwise valid claim.

4. RETALIATION

An employer cannot legally take action against you because you reasonably protested what may be a discriminatory act, participated in an investigation, filed a complaint or assisted another person in doing so.

D. AFFIRMATIVE ACTION

Many Idaho employers, especially those who receive federal contract money, have affirmative action plans. Although plans differ, they generally set goals for recruiting, hiring or promoting women and minorities into positions denied them in the past. Affirmative action plans do not require an employer to put an unqualified individual into a job just because of her/his sex or minority status.

E. EMPLOYMENT CONTRACTS

With the notable exceptions of civil service and union based employment, virtually all employment in Idaho is “at will.” This means that there is no set length for an employment relationship and either the employer or the employee may end it at any time without having to show “good cause” for doing so. There are some exceptions. For example, an employee should never be terminated for a discriminatory reason, in violation of an employer’s own rules or in violation of a public policy.

An employment relationship is based on a contract. This is an agreement between employer and employee, which may be “express” (in writing) or “implied” (from verbal promises). Examples of these contractual responsibilities include the following:

- 1. Collective Bargaining Agreement** between the employer’s management unit and the employees’ collective bargaining unit. The specific remedies under these agreements often are governed by state statute and/or the National Labor Relations Act.
- 2. Written Agreements** may exist between employer and employee (or independent contractor). These agreements may cover such items as pay, termination procedures and expected conduct. An agreement that a worker is an independent contractor is only one factor in considering whether a worker is really an employee.
- 3. Employment Policies, Handbooks and Manuals** may create special contractual responsibilities for employer and employee, depending upon the language in these documents and their applicability to the circumstances at hand. Employees may generally rely on these manuals for guidelines as to termination and benefits.
- 4. Oral Promises** may or may not be enforceable against the employer or employee.
- 5. Idaho Law** provides for awarding attorney’s fees to whichever side wins a contract-based dispute. Unlike a discrimination case where fees may be awarded against an employee only if it is frivolous, in contract claims the loser always may be forced to pay fees for the winner’s cost and efforts.

F. CONSTITUTIONAL AND MISCELLANEOUS STATUTORY RIGHTS

Constitutional and statutory provisions may impose duties and obligations upon the employer or employee in certain circumstances. A few examples follow:

- 1. Public Employees** often have special procedural rights that private employees do not have. For example, Idaho public school teachers have special rights in connection with the Idaho tenure statutes.
- 2. The Right-to-Work Law** prohibits discrimination in connection with employment against individuals based on their affiliation or nonaffiliation with a labor organization. Express civil and criminal penalties are provided.
- 3. Jury Duty or Subpoena Compliance** is a protected activity. Employers may not take retaliatory action against employees who obey subpoenas or attend jury duty.
- 4. Polygraph** or lie detector tests are prohibited as a condition for employment or generally for continuation of employment. State and federal use of polygraphs is expressly excluded from this prohibition.
- 5. State-Authorized Wage Garnishments for Child Support** are protected from employer discipline. A fine is imposed upon any employer who refuses to employ or takes disciplinary action against an employee as a result of a state garnishment (automatic payment taken out of paycheck) for child support.
- 6. The Immigration Reform and Control Act of 1986** requires employers to verify that all new hires are legally authorized to work in this country. It requires that all workers have work authorization documents if they are not citizens. This means that you should be

prepared to show any new employer certain documents such as a U.S. passport or a driver's license and an original Social Security card. You will also be asked to sign, under penalty of perjury, an employment eligibility verification (Form I-9).

7. The Federal Rehabilitation Act of 1973 protects employees who work for federal contractors from discrimination based on disability. For more information about this law or to pursue a complaint of federal disability discrimination, contact the Office of Federal Contract Compliance Programs, U.S. Department of Labor, 1515 S.W. Fifth Avenue, Suite 1030, Portland, Oregon 97201, (503) 326-4112.

8. COBRA - Under federal law (Consolidated Omnibus Budget Reconciliation Act, referred to as COBRA) employers who employ twenty or more persons must offer continued health insurance coverage (including dental and vision plans) to employees upon termination. The continued coverage for a former employee and dependents must be for up to 18 months and at no more than 102% of the employer's cost. This provision applies so long as the employee was not terminated for gross misconduct.

Under COBRA, if an employee becomes divorced while continuing employment, the employer must offer the former spouse and any dependent children a 36-month continuation of health insurance coverage. These provisions apply so long as the persons are not eligible for coverage under any other group plan. Anyone wishing to receive the continued insurance coverage must notify the employer of their intention to do so within 60 days of the triggering event (such as termination).

9. The Family and Medical Leave Act, (FMLA) requires employers with 50 or more workers to offer their employees 12 weeks of unpaid leave each year for the birth or adoption of a child; for the care of a seriously ill child, spouse or parent; or for the employee's own serious illness. Workers in companies with fewer than 50 employees, part time workers, workers with less than one year of employment (1,250 hours) and the highest paid 10% of employees are not covered under the Act.

Employers are required to maintain health insurance coverage for workers on FMLA leave. When the need for leave is predictable, a worker is required to give 30 days notice. Absent workers must be allowed to take the same job or an equivalent job on their return to work, providing they did not overstay their FMLA leave. If the employee decides not to return to work after the FMLA leave, then medical insurance costs could be recouped from the employee.

G. JOB SAFETY AND WORKER'S COMPENSATION

Working conditions must meet the safety and health requirements established under the federal Occupational Safety and Health Act. Any suspected violation first should be pointed out to your employer and if not corrected or resolved, should be reported to the United States Department of Labor, Occupational Safety and Health office. The area office is located in Boise with field offices in Pocatello, Lewiston and Coeur d'Alene. They are listed under United States Government in your phone book.

Generally, your employer must carry Workers' Compensation Insurance. If you are injured on the job you may be entitled to wage loss benefit payments while you are disabled, as well as medical expenses.

If you are injured on the job, notify your employer immediately. Your employer must give you a notice of injury form to complete. This may allow you to have your medical expenses paid by the employer. You must also tell your doctor that you are claiming an on-the-job injury and why. If you miss more than five days of work, you may be eligible to receive benefits for lost wages. If you are totally disabled, you should be compensated for your physical impairment as well as any loss of earning capacity.

You should not be terminated from your employment in retaliation for filing a worker's compensation claim. Such termination may be grounds for a wrongful termination claim, as your right to file a worker's compensation claim is protected. Employers should not refuse to hire workers who have previously received worker's compensation awards or have been disabled from an on-the-job injury because of either of those facts, so long as the worker is qualified for, and able to perform of the essential functions of the job in question.

Under the Americans with Disabilities Act, an employer may not discriminate against employees with disabilities. Employers must also make reasonable accommodations for employees with disabilities, absent undue hardship.

H. UNEMPLOYMENT BENEFITS

Unemployment benefits are available upon severance of the employment relationship, unless you are discharged for misconduct in connection with employment or voluntarily quit without good cause connected to the work. Unemployment benefits are only awarded to persons who have been involuntarily separated from their jobs. You must have earned at least \$1444.01 in three months of one year to be eligible for unemployment benefits.

A claim for unemployment benefits, titled a “separation statement,” must be filed with the State Department of Labor (DOL). During the time you are collecting benefits, you must certify to the DOE the attempts made to obtain new employment. Most employers in Idaho are subject to unemployment insurance taxes, but certain exemptions exist for some domestic and agricultural employers. Certain classes of workers also are exempt from Idaho’s employment security law (e.g., independent contractors, real estate brokers, etc.). Unemployment benefits are taxable income.

Under certain conditions, you may be forced to leave employment due to psychological or medical conditions that make you unable to work. This includes harassment that continues to the point where you are too emotionally upset to work. Even if you quit, unemployment benefits may be awarded if you can show that you were forced to quit for reasons beyond your control. Employees must, however, pursue “available options” prior to quitting if the separation is to be considered involuntary. This includes filing and voicing grievances.

I. TERMINATION

After termination, an employee’s rights are set mostly by statute. First, if there is no misconduct, unemployment benefits may be available. COBRA benefits relating to continued health care benefits are available, but usually at a substantially higher price than through the company.

Second, if there is an illegality or discrimination involved, rights may be vindicated through administrative agencies or the courts. However, the cost, time and travails of vindication, along with the defenses usually raised against claims, in comparison to what may be gained by an action against a former employer must be carefully weighed. An unsuccessful employee may be faced with paying for the employer’s successful defense against the claim, if the claim is frivolous.

Third, the employer may provide an internal grievance process, or the termination may appear to be a breach of contract. Where a contract claim is considered, the potential at-will defense should be evaluated. Employment at will is a contract concept: Each day of work gains the worker that day’s agreed pay and benefits. The contract can be terminated at any time, for a good reason, a bad reason or no reason at all, without liability. There are three basic exceptions to the absolute right of termination by either party: (1) a contract for a specific length of time; (2) a contract where the employer limits the reasons for termination and (3) the public policy exception. Few examples of (1) and (2) exist. In the public policy exception, the claims are from two separate sources: the court-created rights regarding and defining public policy and the state and federal legislatures’ statutes as are summarized above in Section F, “Constitutional and Miscellaneous Statutory Rights.”

If an employment contract existed and you were terminated in violation of that contract, you may have a claim for wrongful termination. Even if neither an express nor an implied contract existed, you may under certain circumstances have a claim for wrongful termination.

This area of the law in Idaho has been thoroughly explored in the past 15 years of case law from the Supreme Court. Successful claims have been brought in Idaho and other states when an employee was terminated for the following: (1) serving jury duty or exercising any other statutory right; (2) refusing to violate the law; (3) refusing to commit perjury or falsify data for the employer; (4) testifying against the employer; (5) combating discriminatory acts including sexual advances or discrimination; (6) refusing to submit to a polygraph examination; (7) opposition to employer’s illegal or improper practice; (8) opposition to dangerous, unhealthy or unsafe working conditions; (9) exercise of first amendment rights of a public employee.

However, generalized claims of unfairness, discrimination (not based on a statutory violation), and/or poor treatment are uniformly rejected by the courts. In considering an action related to the loss of a job, several considerations cannot be overlooked:

1. Employment litigation carries with it virtually all of the emotional anguish of domestic relations litigation, with two changes:
 - a. There are no children involved; and
 - b. The employer always has more money for the fight.
2. If the fight is over an employment contract:
 - a. The injured party has the obligation to lessen his losses and damages to the greatest extent possible;
 - b. There is no claim for the emotional distress associated with losing a job; and
 - c. If the fight is lost, the employee pays the employer’s attorney fees and costs;
3. Another job is usually better, and more rewarding, than a lawsuit.